

**STATE OF TENNESSEE
DEPARTMENT OF HEALTH**

IN THE MATTER OF:)	BEFORE THE TENNESSEE BOARD
)	OF MEDICAL EXAMINERS
DAVID LESLIE MERRIFIELD, JR., M.D.))	
RESPONDENT)	
)	
JONESBOROUGH, TENNESSEE)	DOCKET NO. 17.18-144262A
TENNESSEE LICENSE NO. 26618)	

AGREED ORDER

Come now the Division of Health Related Boards of the Tennessee Department of Health (hereinafter the "Division"), by and through the Office of General Counsel, and Respondent David Leslie Merrifield, Jr., M.D. (hereinafter "Respondent"), by and through his counsel, who would respectfully move the Tennessee Board of Medical Examiners (hereinafter the "Board") for approval of this Agreed Order affecting Respondent's medical license in the State of Tennessee.

The Board is responsible for the regulation and supervision of medical doctors licensed to practice in the State of Tennessee. *See* Tennessee Medical Practice Act, Tennessee Code Annotated Section (hereinafter "TENN. CODE ANN. §") 63-6-101, *et seq.* It is the policy of the Board to require strict compliance with the laws of this State, and to apply the laws so as to preserve the quality of medical care provided in Tennessee. It is the duty and responsibility of the Board to enforce the Tennessee Medical Practice Act in such a manner as to promote and protect the public health, safety and welfare in every practicable way, including disciplining medical doctors who violate the provisions of TENN. CODE ANN. § 63-6-101, *et seq.* or the Rules and Regulations promulgated by the Board and recorded in the Official Compilation Rules and Regulations of the State of Tennessee (hereinafter "TENN. COMP. R. & REGS.").

Respondent, by his signature to this Agreed Order, waives the right to a contested case hearing and any and all rights to judicial review in this matter. Respondent agrees that presentation to and consideration of this Agreed Order by the Board for ratification and all matters divulged during that process shall not constitute unfair disclosure such that the Board or any of its members shall be prejudiced to the extent that requires their disqualification from hearing this matter should this Order not be ratified. Likewise, all matters, admissions and statements disclosed or exchanged during the attempted ratification process shall not be used against Respondent in any subsequent proceeding unless independently entered into evidence or introduced as admissions.

Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to challenge or contest the validity of this Agreed Order. Respondent understands that by signing this Agreed Order, Respondent is allowing the Board to issue its Order without further process. Respondent acknowledges that this is a formal disciplinary action and will be reported to the National Practitioner Data Bank and/ or similar agency. In the event that the Board rejects this Agreed Order for any reason, it will be of no force or effect for either party.

STIPULATIONS OF FACT

1. Respondent has been at all times pertinent hereto licensed by the Board as a medical doctor in the State of Tennessee, having been granted Tennessee medical license number 26618 by the Board on about May 26, 1995, which expires on June 30, 2018.
2. On or about September 23, 2014, Respondent was convicted of driving under the influence (DUI).
3. Respondent failed to notify the Board of Medical Examiners of his DUI conviction.

4. Respondent was a patient of William Clever, NP, while simultaneously serving as his supervising physician. On March 4, 2013, the Respondent received treatment from William Clever, NP, and Respondent signed off on his own medical record.
5. Respondent wrote fourteen (14) prescriptions for controlled substances to patient B.L. without formulating a therapeutic plan, conducting a physical examination, and creating and or maintaining a medical record. The controlled substances included Diazepam, Clonazepam, and Adderall.
6. Respondent wrote thirty-five (35) consecutive prescriptions for Suboxone to patient C.N. without creating and or maintaining a medical record for these prescriptions. Additionally, the medical record does not reflect that a urine drug screen was conducted and evaluated prior to the Respondent writing these 35 (thirty-five) prescriptions. The Respondent also failed to create a treatment plan.
7. Respondent wrote five (5) prescriptions to patient B.K. without creating and or maintaining a medical record for these prescriptions. The prescriptions were for Subutex and Clonazepam. The Respondent did not require the patient to submit to a urine drug screen prior to receiving the two (2) Subutex prescriptions.
8. From December 2014 to March 2015, Respondent wrote ten (10) prescriptions to patient A.H. for Subutex without requiring the patient to submit to a urine drug screen. While maintaining a physician-patient relationship with A.H., the Respondent hired A.H., gave A.H. an allowance, credit card, a 2015 Jeep Compass, and engaged in a sexual relationship with A.H.
9. Respondent wrote at least sixty (60) prescriptions for controlled substances patient M.S. without creating and or maintaining a medical record or formulating a therapeutic plan. At

least thirty (30) of these prescriptions were for Subutex. Respondent did not require M.S. to submit to urine drug screens prior to prescribing Subutex.

10. Respondent prescribed Suboxone outside the clinic setting. Specifically, the Respondent met patients at McDonalds, Burger King, and at their homes to give them Suboxone or Subutex prescriptions. Respondent admits that he did not have access to patient charts and urine drug screen results when he wrote these prescriptions.

GROUNDS FOR DISCIPLINE

The facts stipulated to in the Stipulations of Fact section are sufficient to establish that grounds for discipline of Respondent's medical license exist. Respondent's acts as described in Paragraphs two (2) through ten (10) of this Agreed Order are sufficient to establish that grounds for discipline of Respondent's medical license exist. Specifically, Respondent has violated the following statutes or rules which are part of the Tennessee Medical Practice Act, (TENN. CODE ANN. §§ 63-6-101, *et seq.* and TENN. COMP. R & REGS.) for which disciplinary action before and by the Board is authorized:

11. The facts stipulated to in paragraphs three (3) through ten (10) of the Stipulations of Fact, *supra*, would constitute a violation of Tennessee law, pursuant to TENN. CODE ANN. § 63-6-214(b)(1):

Unprofessional, dishonorable or unethical conduct [.]

12. The fact stipulated to in paragraph two (2) of the Stipulations of Fact, *supra*, would constitute a violation of Tennessee law, pursuant to TENN. CODE ANN. § 63-6-214(b)(10):

Conviction of a felony, conviction of any offense under state or federal laws relative to drugs or the practice of medicine, conviction of any offense involving moral turpitude or

conviction of any offense for which the person is required to register as a sexual offender or violent sexual offender pursuant to title 40, chapter 39, part 2 [.]

13. The fact stipulated to in paragraph three (3) of the Stipulations of Fact, *supra*, would constitute violation of Tennessee law, pursuant to TENN. CODE ANN. § 63-51-117(e), which provides that failure of a licensed healthcare provider to report certain events, including criminal convictions, is grounds for disciplinary action.

14. The facts stipulated to in paragraphs five (5) through nine (9) of the Stipulations of Fact, *supra*, would constitute a violation of Tennessee law, pursuant to TENN. CODE ANN. § 63-6-214(b)(4):

Gross health care liability or a pattern of continued or repeated health care liability, ignorance, negligence or incompetence in the course of medical practice;

15. The facts stipulated to in paragraphs five (5) through nine (9) of the Stipulations of Fact, *supra*, would constitute a violation of Tennessee law, pursuant to TENN. CODE ANN. § 63-6-214(b)(12):

Dispensing, prescribing or otherwise distributing any controlled substance or any other drug not in the course of professional practice, or not in good faith to relieve pain and suffering, or not to cure an ailment, physical infirmity or disease, or in amounts and/or for durations not medically necessary, advisable or justified for a diagnosed condition;

16. The facts stipulated to in paragraphs six (6) through nine (9) of the Stipulations of Fact, *supra*, would constitute a violation of Tennessee law, pursuant to TENN. CODE ANN. § 63-6-214(b)(13):

Dispensing, prescribing or otherwise distributing to any person a controlled substance or other drug if such person is addicted to the habit of using controlled substances without making a bona fide effort to cure the habit of such patient;

17. The facts stipulated to in paragraphs five (5) through nine (9) of the Stipulations of Fact, *supra*, constitute grounds for disciplinary action against Respondent's license to practice as a medical doctor in the State of Tennessee pursuant to TENN. COMP. R. & REGS., Rule 0880-02-.14(7):

(a) Except as provided in subparagraph (b), it shall be a prima facie violation of T.C.A. § 63-6-214 (b) (1), (4), and (12) for a physician to prescribe or dispense any drug to any individual, whether in person or by electronic means or over the Internet or over telephone lines, unless the physician, or his/her licensed supervisee pursuant to appropriate protocols or medical orders, has first done and appropriately documented, for the person to whom a prescription is to be issued or drugs dispensed, all of the following:

1. Performed an appropriate history and physical examination; and
2. Made a diagnosis based upon the examinations and all diagnostic and laboratory tests consistent with good medical care; and
3. Formulated a therapeutic plan, and discussed it, along with the basis for it and the risks and benefits of various treatments options, a part of which might be the prescription or dispensed drug, with the patient; and
4. Insured availability of the physician or coverage for the patient for appropriate follow-up care.

20. The facts stipulated in paragraphs five (5), seven (7), and nine (9) of the Stipulations of Fact, *supra*, constitute grounds for disciplinary action against Respondent's license to practice as a medical doctor in the State of Tennessee pursuant to TENN. COMP. R. & REGS., Rule 0880-02-.15(4)(a):

Duty to Create and Maintain Medical Records - As a component of the standard of care and of minimal competency a physician must cause to be created and cause to be maintained a medical record for every patient for whom he or she, and/or any of his or her professionally licensed supervisees, performs services or provides professional consultation.

21. The facts stipulated in paragraph eight (8) of the Stipulations of Fact, *supra*, constitute grounds for disciplinary action against Respondent's license to practice as a medical doctor in the State of Tennessee pursuant to TENN. COMP. R. & REGS., Rule 0880-02-.14(8):

Code of Ethics - The Board adopts, as if fully set out herein and to the extent that it does not conflict with state law, rules or Board Position Statements, as its code of medical ethics the "Code of Medical Ethics" published by the A.M.A. Council on Ethical and Judicial Affairs as it may, from time to time, be amended.

22. The facts stipulated in paragraph eight (8) of the Stipulation of Fact, *supra*, constitute a violation of the Code of Medical Ethics of the American Medical Association, as articulated in Opinion 9.1.1, Romantic or Sexual Relationships with Patients, which states:

Romantic or sexual interactions between physicians and patients that occur concurrently with the patient physician relationship are unethical. Such interactions detract from the goals of the patient-physician relationship and may exploit the vulnerability of the patient, compromise the physician's ability to make objective judgments about the patient's health care, and ultimately be detrimental to the patient's well-being.

A physician must terminate the patient-physician relationship before initiating a dating, romantic, or sexual relationship with a patient.

Likewise, sexual or romantic relationships between a physician and a former patient may be unduly influenced by the previous physician-patient relationship. Sexual or romantic relationships with former patients are unethical if the physician uses or exploits trust, knowledge, emotions, or influence derived from the previous professional relationship, or if a romantic relationship would otherwise foreseeably harm the individual.

In keeping with a physician's ethical obligations to avoid inappropriate behavior, a physician who has reason to believe that nonsexual, nonclinical contact with a patient may be perceived as or may lead to romantic or sexual contact should avoid such contact.

POLICY STATEMENT

The Tennessee Board of Medical Examiners takes the following action in order to protect the health, safety and welfare of the people in the State of Tennessee and ensure that the public confidence in the integrity of the medical profession is preserved.

ORDER

NOW THEREFORE, Respondent, for the purpose of avoiding further administrative action with respect to this cause, agrees to the following:

23. The Tennessee medical license of David Leslie Merrifield, Jr., M.D. license number 26618, is hereby placed on **PROBATION**, effective the date of entry of this Consent Order, for a period of not less than five (5) years.
24. With respect to the Tennessee Medical Foundation (TMF):
- a. Respondent must maintain advocacy with the TMF and must maintain one-hundred percent (100%) compliance with all provisions and terms of his five (5) year continuing care contract and any subsequent extension of the contract.
 - b. Respondent shall cause the TMF to notify the Board's Disciplinary Coordinator in writing of any violation of the TMF contract.
 - c. Respondent shall immediately notify the Board's Medical Consultant if at any time Respondent no longer has the advocacy of TMF during the period of probation.
 - d. At the direction of TMF, the Respondent shall submit to random drug/alcohol screening under the protocol established by the TMF. If the Respondent fails to submit to appropriate testing, or the test results indicate inappropriate use of drugs or alcohol, the TMF will also immediately notify the Board's Medical Consultant.
25. Respondent shall not serve as a supervising physician or substitute supervising physician.
26. Respondent shall maintain good and lawful conduct, and any violation of law that relates to the practice of medicine or Respondent's ability to safely and competently practice medicine will be a violation of the terms of this Order.
27. Respondent agrees to and by his signature below does hereby SURRENDER his DATA waive designation. Upon entry of this Consent Order, Respondent shall contact the Drug Enforcement Administration (DEA) in writing and surrender his DATA waive designation within (30) days.

- a. Within 45 (forty-five) days of the effective date of this Consent Order, the Respondent must submit proof that he contacted the DEA in writing to surrender his DATA waive designation. Respondent must submit this proof to the Disciplinary Coordinator at the address listed in paragraph thirty-two (32) below.
 - b. Respondent agrees not to seek reinstatement of the DATA waive designation until the expiration of the five (5) year probationary period and successful petition of an Order of Compliance lifting the probation.
28. Respondent agrees that he shall not prescribe or dispense any product containing buprenorphine for any purpose. Respondent acknowledges that prescribing or dispensing any product containing buprenorphine for any purpose will be a violation of this Order and may result in further discipline from the Board.
29. Respondent shall pay five (5) "Type B" civil penalties in the amount of five hundred dollars (\$500.00) each representing one penalty for every patient that the Respondent failed to administer appropriate care to, for a total assessment of two thousand and five hundred dollars (\$2,500.00). This civil penalty shall be paid in full and sent to the address listed below within thirty (30) days of the effective date of this Consent Order.
30. Respondent shall pay, pursuant to TENN. CODE ANN. § 63-6-214(k) and Rule 0880-2-.12(1)(j) of the Official Compilation Rules and Regulations of the State of Tennessee, the actual and reasonable costs of prosecuting this case to the extent allowed by law, including all costs assessed by the Office of Investigations, Secretary of State, Administrative Procedures Division as well as the Office of General Counsel. These costs will be established by an Assessment of Costs prepared and filed by counsel for the State. The

maximum amount for the assessment of costs shall be twelve thousand dollars (\$12,000.00).

31. Respondent must enroll in and successfully complete within one (1) year of the effective date of this Order, the two (2) day medical course entitled "*Medical Ethics, Boundaries & Professionalism*" offered at The Case Western Reserve University Continuing Medical Education Program at The Case Western Reserve University School of Medicine located in Cleveland, Ohio, or an equivalent course approved in advance by the Board's Medical Director. Within thirty (30) days after completion of such course, Respondent shall mail or deliver proof of compliance with this course requirement to: **Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243.** Any Continuing Medical Education (hereinafter "CME") course hours earned from attendance and completion of the course required by this paragraph shall be in addition to the CME hours required to maintain licensure.
32. Respondent must enroll in and successfully complete within one (1) year of the effective date of this Order, the course entitled "*Prescribing Controlled Drugs*" offered at The Center for Professional Health at Vanderbilt University Medical Center located in Nashville, Tennessee, or an equivalent course approved in advance by the Board's Medical Director. Within thirty (30) days after completion of such course, Respondent shall mail or deliver proof of compliance with this course requirement to: **Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, 665 Mainstream Drive, 2nd Floor, Nashville, Tennessee 37243.** Any CME course hours earned from attendance and completion of the course required by this paragraph shall be

in addition to the CME hours required to maintain licensure.

33. Respondent must enroll in and successfully complete within one (1) year of the effective date of this Order, the course entitled "*Maintaining Proper Boundaries*" offered at The Center for Professional Health at Vanderbilt University Medical Center located in Nashville, Tennessee, or an equivalent course approved in advance by the Board's Medical Director. Within thirty (30) days after completion of such course, Respondent shall mail or deliver proof of compliance with this course requirement to: **Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, 665 Mainstream Drive, 2nd Floor, Nashville, Tennessee 37243.** Any CME course hours earned from attendance and completion of the course required by this paragraph shall be in addition to the CME hours required to maintain licensure.
34. Respondent must enroll in and successfully complete within one (1) year of the effective date of this Order, the two (2) day medical course entitled "*Medical Documentation: Clinical, Legal and Economic Implications for Healthcare Providers*" offered at The Case Western Reserve University Continuing Medical Education Program at The Case Western Reserve University School of Medicine located in Cleveland, Ohio, or an equivalent course approved by the Board's Medical Director. Within thirty (30) days after completion of such course, Respondent shall mail or deliver proof of compliance with this course requirement to: **Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243.** Any Continuing Medical Education (hereinafter "CME") course hours earned from attendance and completion of the course required by this paragraph shall be in addition to the CME hours required to maintain licensure.


35. At the expiration of the five (5) year probationary period, Respondent becomes eligible to petition the Tennessee Board of Medical Examiners for an "Order of Compliance" lifting the restrictions imposed by this Consent Order. As part of his petition for an "Order of Compliance," Respondent shall appear personally before the Tennessee Board of Medical Examiners unless waived by the Board's Medical Consultant.

NOTICE

36. Respondent understands that this is a formal disciplinary action and will be reported to the National Practitioner Data Bank (NPDB) and/or similar agency.
37. Any and all costs for this case shall be paid in full within sixty (60) days from the issuance of the Assessment of Costs. Payment shall be made by **certified check, cashier's check, or money order**, payable to the **State of Tennessee, Department of Health**. Any and all payments shall be forwarded to the **Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243**. A notation shall be placed on said money order or such check that it is payable for the civil penalties and costs of DAVID LESLIE MERRIFIELD, JR. M.D., COMPLAINT NO. 2015040671.

This **CONSENT ORDER** was approved by a majority of a panel of the Tennessee Board of Medical Examiners at a public disciplinary meeting of a panel of the Board and signed this

27th day of September, 2017.

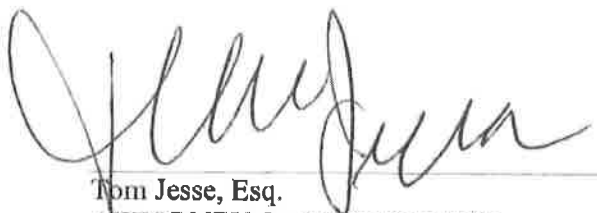

Chairperson/Acting Chairperson
Tennessee Board of Medical Examiners

APPROVED FOR ENTRY:



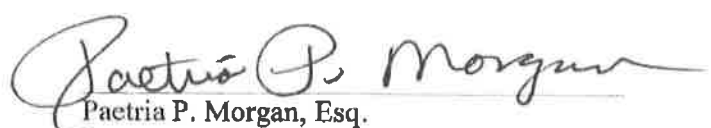
David Leslie Merrifield, Jr, M.D.
RESPONDENT

9/15/17
DATE



Tom Jesse, Esq.
ATTORNEY for RESPONDENT
412 E. Unanka Avenue
Johnson City, Tennessee 37601

9/15/17
DATE




Paetria P. Morgan, Esq.
ASSISTANT GENERAL COUNSEL
Office of General Counsel
Tennessee Department of Health
665 Mainstream Drive, 2nd Floor
Nashville, Tennessee 37243
(615) 741-1611

9/27/17
DATE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon Respondent, David Leslie Merrifield, Jr., M.D., through Respondent's attorney, Tom Jesse, 412 E. Unanka Ave., Johnson city, Tennessee 37601 by delivering same in the United States Mail, Certified Number 7016 1970 0001 1321 8559 return receipt requested, and United States First Class Postage Pre-Paid Mail, with sufficient postage thereon to reach its destination.

This 2ND day of October, 2017.


Paetria P. Morgan
Assistant General Counsel